

Page 1

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 08-01789-smb

4 - - - - - - - - - - - - - - - - - x
5 SECURITIES INVESTOR PROTECTION
6 CORPORATION

7 v.

8 BERNARD L. MADOFF INVESTMENT
9 SECURITIES, LLC, et al,

10 Debtors.

11 - - - - - - - - - - - - - - - - - x

12 U.S. Bankruptcy Court
13 One Bowling Green
14 New York, New York

15

16 MARCH 4, 2014

17 2:00 PM

18

19

20

21 B E F O R E :

22 HON. STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: MATTHEW

Page 2

1 HEARING Matter: OSC - hearing to discuss certain pending
2 motions to dismiss and mediation

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Sheila Orms

Page 3

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorneys for SIPA Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: NICHOLAS J. CREMONA, ESQ.

8 EDWARD J. JACOBS, ESQ.

9

10 SIPC

11 Attorneys for SIPC

12 805 15th St., N.W.

13 Suite 800

14 Washington, DC 20005

15

16

17 BY: KEVIN H. BELL, ESQ.

18

19 WINDELS, MARX, LANE & MITTENDORF, LLP

20 Attorney for Windels Marx

21 156 W. 56TH

22 New York, NY 10019

23

24 BY: KIM M. LONGO, ESQ.

25

1 MORRISON & FOERSTER

2 Attorneys for Levy, Persky, Zorkowitz

3

4 BY: HASHANN DEARCY, ESQ.

5

6 LAW OFFICE OF RICHARD (NOT LEGIBLE)

7 Attorneys for various defendants in adversary
8 proceedings

9

10 BY: BRYAN HA, ESQ.

11

12 MILBERG LLP

13 Attorneys for (Not Identified)

14 One Pennsylvania Plaza

15 New York, NY 10119

16

17 BY: MATTHEW A. KUPILLAS, ESQ.

18

19 BECKER & POLIAKOFF

20 Attorneys for (Not Identified)

21 45 Broadway

22 8th Floor

23 New York, NY 10006

24

25 BY: JULIE GORCHKOVA, ESQ.

Page 5

1 PRYOR CASHMAN, LLP
2 Attorneys for (Not Identified)
3 7 Times Square
4 New York, NY 10036
5
6 BY: DAVID C. ROSE, ESQ.
7
8 SEEGER WEISS LLP
9 Attorneys for (Not Identified)
10 77 Water Street
11 New York, NY 10005
12
13 BY: PARVIN AMINOLROAYA, ESQ.
14
15 LAX & NEVILLE LLP
16 Attorneys for (Not Identified)
17 1450 Broadway
18 35th Floor
19 New York, NY 10018
20
21 BY: GABRIELLE J. PRETTO, ESQ.
22
23
24
25

Page 6

1 BERNFELD DEMATREE & (NOT LEGIBLE)
2 Attorneys for various Madoff adv.
3 600 Third Avenue
4 18th Floor
5 New York, NY
6
7 BY: JEFFREY BUNFELD, ESQ.
8
9 WACHTEL MISSRY
10 Attorneys for adversary defendants
11 885 Second Avenue
12 New York, NY 10017
13
14 BY: SARA SPIEGELMAN, ESQ.
15
16 HUNTON & WILLIAMS
17 Attorneys for (Not Identified)
18 200 Park Avenue
19 New York, NY 10166
20
21 BY: ROBERT A. RICH, ESQ.
22
23
24
25

Page 7

1 COLE SCHOTZ

2 Attorneys for Defendants in Adversary 10-04405

3 900 Third Avenue

4 16th Floor

5 New York, NY 10022

6

7 BY: LAURENCE MAY, ESQ.

8

9 GARVEY SCHUBERT BARER

10 Attorneys for (Not Identified)

11 100 Wall Street

12 New York, NY 10005

13

14 BY: (Name on card blacked out)

15 (Name on card blacked out)

16

17 TELEPHONIC APPEARANCES:

18

19 MICHAEL GOLDBERG, AKERMAN LLP FOR VARIOUS CREDITORS

20 CAROLE NEVILLE, DENTONS US LLP, FOR CREDITOR HAROLD J. HEIN

21

22

23

24

25

1 P R O C E E D I N G S

2 THE CLERK: -- reason for this hearing, at the
3 February 14th hearing, some parties expressed a concern
4 about Ms. Chatman's (ph) pending omnibus motion to dismiss
5 and their desire to be heard on some of these issues, and at
6 some point as I recall, the trustee proposed to file an
7 omnibus reply to all pending motions to dismiss, and
8 subsequently filed a schedule identifying 146 motions.

9 I subsequently received letters from Lashann
10 DeArcy at Morrison Foerster which had filed five motions to
11 dismiss in October 2011 and raised at least two issues in my
12 mind, it appears that the consideration of these pending
13 motions to dismiss was inconsistent with the litigation
14 management order which was entered earlier in the case by
15 Judge Lifland, and in particular, required mediation before
16 the trustee filed a response.

17 In addition, the Morrison & Foerster clients
18 simply didn't want to participate in a motion to dismiss,
19 they believed that the motions had been decided by Judge
20 Rakoff, these motions had been made early, and wanted to
21 proceed immediately with mediation. So I issued an order
22 scheduling this hearing to consider the status of the
23 mediation requirement that might have -- the procedure that
24 I adopted, which permitted the trustee to file omnibus
25 motions to all these pending motions, omnibus objections to

Page 9

1 all these pending motions to dismiss, and to determine
2 whether anybody wanted to opt out of the procedure, for
3 whatever reason, to save money, if they didn't think it was
4 worth their time and effort to then have to file a reply,
5 and proceed immediately to mediation. There were also some
6 other issues which I'll get to later.

7 But that's where we are. Do you want to be heard?

8 MS. DEARCY: Yes, Your Honor. I had intended on
9 giving you a summary, but I appreciate you --

10 THE COURT: Do you think I left anything out, or
11 do you think -- you know, this is your chance.

12 MS. DEARCY: No. I represent the Levy, Persky and
13 Borkowitz families in five separate avoidance actions that
14 have been brought by the trustee.

15 You are absolutely correct, Your Honor, that
16 pursuant to the avoidance procedures that were established
17 prior to the cases being filed against my clients in this
18 case, automatic mediation was expected for any case where
19 the amounted issue was less than \$20 million. And I assure
20 you, sir, that is the case in our clients' adversary
21 proceedings.

22 Upon our filing of the motion to dismiss, the
23 trustee was obligated to file a notice of mediation which
24 would have triggered the process of mediation. That didn't
25 happen.

1 After some time, and given the fact that we were
2 keenly aware that a number of cases were pending before
3 Judge Rakoff that would certainly impact the legal landscape
4 of the cases that we were going to mediate.

5 We agreed with the trustee that we would wait
6 until the outcome of the cases before Rakoff, before
7 proceeding with mediation. And I spoke directly with one of
8 Mr. Sheehan's colleagues, a Hakthmeth Varell (ph) who I
9 believe works out of their Ohio office.

10 All of the issues that were raised in our motions
11 to dismiss were virtually the same, so to the extent that
12 that applied to any of the cases pending, it applied to all
13 of them.

14 Your Honor, we represent individuals here, right.
15 These are people who need certainty in their lives --

16 THE COURT: Uh-huh.

17 MS. DEARCY: -- their lives are on hold pending
18 the outcome of these cases. The trustee's absolutely
19 correct, the legal landscape has been set. I would submit
20 respectfully, Your Honor, that because the legal landscape
21 has been set, this case is ripe for mediation.

22 I believe that if we all got in a room knowing
23 what we know, that we could resolve this case without
24 further briefing, and give my clients the certainty that
25 they've been waiting over two years at least since the

Page 11

1 motion to dismiss, and even longer if you count the time the
2 case has been -- was filed.

3 MR. CREMONA: Good afternoon, Your Honor, Nicholas
4 Cremona of Baker Hostetler appearing on behalf of the
5 trustee.

6 If I might, Your Honor, I'd just like to give a
7 little bit of background before addressing my colleague, Ms.
8 DeArcy's presentation. We presently have about 150 motions
9 to dismiss that are on file, and as Your Honor can see from
10 the schedules we've provided, they've been filed from the
11 inception of the case, early 2011 through -- even through
12 yesterday.

13 At the same time in early 2011, we had the process
14 of defendants moving to withdraw the reference en masse, and
15 we had an excursion to the district court that lasted about
16 two and a half years. And a number of issues were raised
17 and Judge Rakoff withdrew a number of discreet issues that
18 impacted the innocent investor, cases that are now before
19 Your Honor.

20 The last issue that was relevant to the good faith
21 cases was determined by Judge Rakoff's antecedent debt
22 decision on October 15th of last year, and we commonly refer
23 to that, that is the decision whereby -- wherein Judge
24 Rakoff found that the defendants' various claims for damages
25 and rescission under federal and state law do not constitute

Page 12

1 value or antecedent debt within the meaning of Section
2 548(c) of the Bankruptcy Code.

3 It was everyone's understanding that we would be
4 holding those motions to dismiss in abeyance pending the
5 resolution of the issues before the district court as I
6 think Ms. DeArcy just articulated. That occurred October
7 15th.

8 At that point in time, we had about seven -- about
9 80 motions to dismiss that were pending. And it was the
10 view -- the trustee's view at the time that many of those
11 motions, if not substantially all of them had effectively
12 been determined by intervening decisions of Judge Lifland
13 and/or Judge Rakoff, again as I think Ms. DeArcy would agree
14 with.

15 At that point in time, or shortly thereafter on
16 November 1, we had the omnibus motion to dismiss filed by
17 Ms. Chatman's firm, the Becker and Polikoff (ph) motion
18 which is presently fully briefed and scheduled to be argued
19 on March 10th.

20 That motion -- the trustee's rationale in dealing
21 with the motions to dismiss, and whether to go to mediation,
22 was informed by the direction of Judge Lifland. At the
23 time, the Judge directed the parties to dispense with
24 mediation and to move forward immediately on briefing. That
25 motion -- that omnibus motion to dismiss.

Page 13

1 So although we had gotten the clarity we wanted on
2 October 15th that allowed us to now move forward with the
3 over 600 cases that had now been sent back before Your
4 Honor, we were informed that we should dispense with
5 mediation and go forward on certain of those motions to
6 dismiss.

7 So given that back drop, we felt that -- and given
8 the rulings that Your Honor made on February 14th indicating
9 that to the extent motions to dismiss raise the same issues
10 based on the same predicate facts, the rulings would be
11 dispositive of other similar motions.

12 THE COURT: Well, that's sort of what I said, but
13 look, the question really is, if somebody doesn't want to go
14 forward with this, because they don't want to spend the time
15 and money, why should they have to?

16 MR. CREMONA: We don't disagree with that, Your
17 Honor. We think that -- we would -- well, based on what --
18 I think one simple solution to what Ms. DeArcy said is that
19 her motion has been determined, the issues in her motion
20 have been determined by the decisions of the district court
21 and/or Judge Lifland. If that's the case, we would suggest
22 that the motion to dismiss be withdrawn, and we'd be happy
23 to go forward --

24 THE COURT: Do you have any objection to
25 withdrawing the motion to dismiss?

Page 14

1 MS. DEARCY: I'm sorry. Yes, Your Honor. I
2 believe that the adversary procedures contemplated allowing
3 us an opportunity to mediate and see if we could come to a
4 resolution without waiving our ability --

5 THE COURT: Well, you could withdraw without
6 prejudice, because you made your motion very early, it's one
7 of the issues I want to raise with you --

8 MS. DEARCY: Yes.

9 THE COURT: -- later, but you made the motion very
10 early.

11 MS. DEARCY: Yes.

12 THE COURT: You'd have to make a different motion
13 to dismiss at this point, wouldn't you?

14 MS. DEARCY: Sort of. I mean, if withdrawal of
15 this motion would be without prejudice to our ability to
16 file another motion to dismiss --

17 THE COURT: Any objection to that?

18 MR. CREMONA: None whatsoever.

19 THE COURT: Okay. So why don't you just file a
20 notice so we have it on file withdrawing it without
21 prejudice your motions to dismiss.

22 MS. DEARCY: And the trustee would then proceed
23 with filing mediation?

24 THE COURT: And I'll direct immediate mediation in
25 these matters, and I don't know if there's anybody else who

Page 15

1 wants to go through this -- who doesn't want to participate
2 in this procedure under the same terms. And particularly,
3 you do have a lot of these older motions, I know it's not
4 your issue, but --

5 MR. CREMONA: Your Honor, we would be happy to
6 entertain a procedure whereby we could allow parties to
7 agree to withdraw the motions as moot because we --

8 THE COURT: Well, why don't you contact them? You
9 know, I don't know if this is the right place to ask for a
10 vote of anybody, but.

11 MR. CREMONA: We haven't -- we absolutely will do
12 that, Your Honor. That was sort of contemplated. We
13 intended to do that. We -- if there was an intervening
14 event as they described, the motion that was filed and 128
15 actions and we did get some direction from Judge Lifland at
16 the time which informed our decision as to how to proceed --

17 THE COURT: Uh-huh.

18 MR. CREMONA: -- but at this point in time, we'd
19 be happy to do that. It was just that given the rulings
20 that we thought occurred on 2/14 and the rights that -- of
21 parties that were implicated, we wanted to provide the
22 widest opportunity and notice for people to have an
23 opportunity --

24 THE COURT: I didn't say that. And the provenance
25 of this was and I think Ms. Neville is on the phone --

Page 16

1 MS. NEVILLE: Yes.

2 THE COURT: -- she's arguing for the right to be
3 heard, which I understood, and then the trustee stood up,
4 and said, fine, I'll file an omnibus reply to all of the
5 pending motions. But, you know, frankly I was not familiar
6 with the litigation order. But in addition, people had not
7 come into the hearing necessarily or not come to the hearing
8 at all, understanding that that's what would occur, and this
9 just gives them an opportunity to opt out of the procedure.

10 So why don't you contact the parties. There
11 aren't that many law firms involved, I looked at your
12 list --

13 MR. CREMONA: Uh-huh.

14 THE COURT: -- and find out if there's anybody
15 else who simply wants to forego the procedure with -- if
16 they think their motion has been denied, or has been
17 resolved by Judge Rakoff to withdraw their motion.

18 Now, I don't have a problem with them pursuing the
19 motion and also going through mediation. It happens all the
20 time. It's no extra work for you because you're going to
21 file an omnibus reply. And if they want to spend the time,
22 you know, filing a reply to your reply, I guess they can do
23 that.

24 MR. CREMONA: The only response I would have, Your
25 Honor, is we didn't think that it would be efficient or

Page 17

1 appropriate to mediate the very same issues that are all, at
2 this point, sub judice will be determined in the very near
3 future.

4 The reason we had -- and I would also just point
5 out, Your Honor, if I could, that the LPO provides that the
6 parties can agree that mediation will not be productive.

7 THE COURT: They can usually agree to that.

8 MR. CREMONA: Yes.

9 THE COURT: And there's no mutual agreement here.
10 And in addition, you know, these -- you say these issues are
11 decided, in fact, there's an argument in the Second Circuit
12 tomorrow, no one knows what's going to happen, my
13 understanding is Judge Rakoff still has a couple of issues
14 that he hasn't decided.

15 As I said the last time, this thing can't go on
16 until the last issue is decided. And one of the things I
17 was going to raise with you, my understanding is the trial
18 at the end of the month has been settled?

19 MR. CREMONA: Yes, that's correct.

20 THE COURT: I wanted to find out if there are any
21 other cases ready to go?

22 MR. CREMONA: Uh-huh.

23 THE COURT: In other words, any two year reach
24 back cases where there were no motions to dismiss pending,
25 because I want to start trying these cases.

Page 18

1 MR. CREMONA: Understood, Your Honor, and we're
2 looking into that.

3 THE COURT: All right. Yes?

4 MS. NEVILLE: Your Honor, this is Carol Neville.

5 THE COURT: Yes.

6 MS. NEVILLE: I'd like to raise one point. The
7 procedures called for mediation before the motion to dismiss
8 was fully briefed. And I know that there are a number of
9 people who would consider mediation at some point when we've
10 narrowed the issues.

11 So I'm hoping that what you just said would give
12 us the opportunity to mediate at some point down the road
13 when we've narrowed some of the issues.

14 THE COURT: Ms. Neville, you can always mutually
15 agree --

16 MS. NEVILLE: Okay.

17 THE COURT: -- to mediate. I don't know how much
18 narrower the issues are going to become. Obviously there
19 are some undecided issues, but it's been pretty much
20 narrowed by the Second Circuit and Judge Rakoff.

21 Let me ask you a question, in your reply -- so
22 we've taken care of --

23 MS. DEARCY: Yes.

24 THE COURT: -- your issue. In your omnibus reply,
25 are you going to identify which defendants made which

Page 19

1 arguments?

2 MR. CREMONA: We have planned to do so, Your
3 Honor.

4 THE COURT: Okay, fine. Also I want all of the
5 defendants to deliver bindings that contain their pleadings,
6 so we don't need the trustee's omnibus reply, we'll have one
7 copy of that. And obviously to the extent that a law firm
8 represents more than one defendant, and itself made an
9 omnibus motion to dismiss like Ms. Chatman, for example, I
10 only need one binder.

11 One other thing you had in your letter, you said
12 you were going to add names or add cases to your list. No
13 cases can be added or dropped without my approval, because I
14 have to know which motions I'm deciding and which motions
15 I'm not deciding. All right?

16 MR. CREMONA: Understood, Your Honor, and I guess
17 that's what I wanted to address at this point. If there is
18 going to be an opt out procedure, we would then have to
19 modify our exhibit and there have been, I think when we
20 originally submitted our letter, there were 144 cases on --

21 THE COURT: 146.

22 MR. CREMONA: -- I apologize, now there are 151
23 because we -- and that's through yesterday afternoon. How -
24 - but we can --

25 THE COURT: That assumes they want to participate

Page 20

1 I guess.

2 MR. CREMONA: Uh-huh.

3 THE COURT: I mean, if they want to participate,
4 that's fine with me.

5 MR. CREMONA: Uh-huh.

6 THE COURT: It sounds to me like it's going to be
7 -- what I'll call the same post Rakoff arguments. If it's a
8 fresh motion to dismiss.

9 MR. CREMONA: Well, we would take a different
10 view. I think some of the --

11 THE COURT: I haven't looked at them.

12 MR. CREMONA: Yes. I mean, some of the -- the
13 motion that was filed, in fact, yesterday raises antecedent
14 debt, which we would take the position that it's been
15 resolved, but.

16 THE COURT: All right. Well, that one won't take
17 long.

18 MR. CREMONA: Uh-huh.

19 THE COURT: But -- all right. So why don't you
20 survey the defendants, find out if any of the others want to
21 opt out, it's -- as I say, it's not going to affect the work
22 you're going to do, and assuming you're going to file your
23 reply on time, you can just file something subsequently
24 that's -- that informs me that these cases are not the
25 subject in the motion to dismiss anymore.

Page 21

1 MR. CREMONA: There were two housekeeping items
2 I'd like to address with Your Honor. One, we had a meet and
3 confer with the defense, with certain members of the defense
4 group, and they had requested additional time to file their
5 reply. And given the fact that there is now this potential
6 --

7 THE COURT: So until the last person files a
8 reply, this matter won't be ready, I guess?

9 MR. CREMONA: Well, I mean, given that now we're
10 going to have an amended, possibly an amended exhibit, it
11 would also be helpful to the trustee to have a short
12 extension of time. It wasn't a long period. We had agreed
13 with -- among the parties that our -- the trustee's and
14 SIPC's opposition would be filed instead of March 10 on
15 March 19, and the defendants would have until April 2nd to
16 file their replies.

17 THE COURT: All of the defendants?

18 MR. CREMONA: Again, those that wish to
19 participate, which we would have to crystalize between now
20 and then, which is why I --

21 THE COURT: Why don't you file your reply on time,
22 find out who doesn't want to participate. It gives you a
23 week, because your reply I think is due the 10th, right?

24 MR. CREMONA: It is.

25 THE COURT: And you're ready to file it? You're

Page 22

1 going to file the same reply, aren't you?

2 MR. CREMONA: Yes, that's true. The arguments are
3 substantially the same so if people drop out --

4 THE COURT: All right. So then you can advise me
5 between the 10th and the 17th when you can communicate with
6 counsel, who's not participating in this motion to dismiss.
7 I want to move this along.

8 MR. CREMONA: I agree, Your Honor. The only thing
9 I would point out, I mean, there are some aberrational
10 issues that if they -- if those parties dropped out, would
11 influence the briefing.

12 THE COURT: Call them right now, you know.

13 MR. CREMONA: We will.

14 So -- just so I walk away with clarity, the
15 schedule remains the same?

16 THE COURT: The schedule remains the same.

17 MR. CREMONA: Okay. For both the trustee and the
18 defendant?

19 THE COURT: Yes.

20 MR. CREMONA: Okay.

21 THE COURT: All right. Anything else?

22 MR. MAY: May I?

23 THE COURT: Yes, sir.

24 MR. MAY: Your Honor, just briefly, Your Honor,
25 Laurence May of Cole Schotz. Our firm represents the

Page 23

1 defendants in Adversary 10-04405. That's the Fox adversary
2 proceeding. It's one of them on the Appendix A to Mr.
3 Sheehan's letter.

4 Your Honor, I had discussions with counsel, with
5 Mr. Cremona, and I have a -- we have a little bit -- I think
6 I understand what's happening to my client, but I'm not
7 entirely sure. We have a little bit different
8 circumstances. We have only in our case a six year look --
9 claw back claim.

10 We made a motion in March of 2012 to have the
11 reference withdrawn. That motion was granted. Our case has
12 now been entirely dismissed. We have no pending motion
13 before this Court, we have no pending motion anywhere. The
14 only thing that possibly --

15 THE COURT: No transfers within two years?

16 MR. MAY: No. So I --

17 THE COURT: Unless the Second Circuit reverses it.

18 MR. MAY: Unless the Second Circuit reverses, but
19 as things stand right now, my view is we shouldn't be on
20 that list, we shouldn't be subject to the court order with
21 respect to filing briefs, opt out or otherwise.

22 I submitted that we were put on that list in
23 error, but -- and requested that we be withdrawn, and so far
24 we're still on the list. As I understand circumstances, I
25 don't believe this Court has any jurisdiction over my case

Page 24

1 because --

2 THE COURT: So why don't you withdraw your motion
3 to dismiss?

4 MR. MAY: I don't have a motion to dismiss.

5 THE COURT: Oh, then why are you on the list?

6 MR. MAY: I don't know.

7 THE COURT: Which number -- do you know which
8 number you are on the list? I assumed that this list
9 consisted of pending motions to dismiss.

10 MR. CREMONA: It does, Your Honor. As a technical
11 matter, we included all motions, out of an abundance of
12 caution and for completeness, so they're --

13 THE COURT: Well, out of an abundance of caution
14 if the case is no longer pending, there's nothing to
15 consider.

16 MR. CREMONA: Well, as I explained to Mr. May, I
17 think the way that Judge Rakoff certified the appeal, the
18 case is still pending, and the remaining -- the -- their --
19 the claims are dismissed, but the case is pending. We
20 included them in out of an abundance of caution in case they
21 wanted to have an opportunity to be heard, in the event that
22 we are successful on appeal, which we think we will be and
23 the case is reinstated, I wanted them to have the
24 opportunity, if they so chose, to participate.

25 THE COURT: So what are they supposed to do when

Page 25

1 they get your omnibus reply?

2 MR. CREMONA: I --

3 MR. MAY: My comment, Your Honor, was that the
4 Court will decide what it decides, it should not have any
5 collateral estoppel effect. We recognize that it may have
6 some precedential effect that's against us.

7 THE COURT: Is there an order dismissing your --

8 MR. MAY: Yes. Our case is on appeal to the
9 Second Circuit, Your Honor.

10 THE COURT: Okay.

11 MR. MAY: There's nothing left of our case. Judge
12 Rakoff's order dismissing the case, dismissed all the claims
13 against our client. So our case is done from our
14 perspective.

15 THE COURT: Are there any other cases in the same
16 --

17 MR. CREMONA: There are seven cases in that
18 posture.

19 THE COURT: Well, why don't you identify them? I
20 don't see why they should have to participate in this
21 procedure. Obviously if the Second Circuit or the Supreme
22 Court reaches a different conclusion, it's going to change
23 the case.

24 MR. CREMONA: Uh-huh. I'm happy to remove them,
25 Your Honor.

Page 26

1 THE COURT: I think that's a good idea, as well as
2 the other six.

3 MR. CREMONA: Uh-huh.

4 MR. MAY: Thank you, Judge.

5 THE COURT: Make sure the parties know they've
6 been removed. All right?

7 MR. CREMONA: Thank you.

8 THE COURT: So we've made progress today, we've
9 removed 12 cases.

10 MS. SPIEGELMAN: Good afternoon, Your Honor, Sara
11 Spiegelman of Wachtel Missry. My firm represents the
12 defendants in adversary proceedings 52 through 61 on the
13 schedule.

14 THE COURT: Uh-huh.

15 MS. SPIEGELMAN: We don't want to opt out of the
16 procedure, but we just want to make sure that our issues are
17 addressed on the omnibus reply, and we'd like an opportunity
18 to submit an additional reply if the lead defendants don't
19 address our issues in the way that we would like them to.

20 THE COURT: I don't understand. The trustee's
21 going to file a reply to your motion.

22 MS. SPIEGELMAN: Right. And then --

23 THE COURT: And then you have the right to file a
24 reply, right?

25 MS. SPIEGELMAN: Right. But according to the

Page 27

1 order, it looks like it's one reply drafted by the lead
2 defendant's counsel.

3 THE COURT: Yes. How many cases do you have?

4 MS. SPIEGELMAN: I have ten cases.

5 THE COURT: So file one reply, and if you have a
6 particular argument for one of your cases or two of your
7 cases, point it out in your reply, I don't need ten replies
8 from you.

9 MS. SPIEGELMAN: Okay. My understanding from
10 Baker Hostetler's letter was that all defendants shall
11 coordinate with defense counsel copied on this letter and
12 file one consolidated reply --

13 THE COURT: But there's an order which is
14 different.

15 MS. SPIEGELMAN: Okay.

16 THE COURT: I didn't expect defense counsel to get
17 together and file one reply. It'd be nice if he did, don't
18 get me wrong, but I didn't expect that.

19 MS. SPIEGELMAN: Okay. Thank you, Your Honor.

20 THE COURT: All right. Anything else?

21 (No response)

22 THE COURT: All right. Thank you very, very much.

23 MR. CREMONA: Thank you, Your Honor.

24 (Proceedings concluded at 2:22 PM)

25 * * * * *

Page 28

1

CERTIFICATION

2

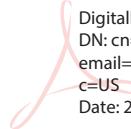
3 I, Sheila G. Orms, certify that the foregoing is a
4 correct transcript from the official electronic sound
5 recording of the proceedings in the above-entitled matter.

6

Date: March 6, 2014

7

8 Sheila
9 Orms



Digitally signed by Sheila Orms
DN: cn=Sheila Orms, o, ou,
email=digital1@veritext.com,
c=US
Date: 2014.03.06 10:28:35 -05'00'

10

11 Signature of Approved Transcriber

12

13

Veritext

14

15 330 Old Country Road

16

Suite 300

17

Mineola, NY 11501

18

19

20

21

22

23

24

25